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No. 975

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA EX REL. MAXIMILLIAN KARL REICHEL, PETITIONER

v.

UGO CARUSI, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court (R. 71a–73a) is not reported. The opinions of the Circuit Court of Appeals for the Third Circuit on the original hearing (R. 79–82) and on the rehearing (R. 89) are reported at 157 F. 2d 732.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 1, 1946 (R. 82). A petition for rehearing (R. 83–88) was denied on

November 6, 1946 (R. 90). The petition for a writ of certiorari was filed on February 3, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien, born in Bohemia, then a part of the Austro-Hungarian Empire, in 1905, who later became a Czechoslovakian citizen when the place of his birth was included in that country after World War I, and who, after the Munich Pact of 1938, while in the United States, petitioned to be and was recognized as a German citizen, is now a citizen or subject of an enemy country within the meaning of the Alien Enemy Act of 1798, despite the re-occupation of the territory of his birth and former residence by Czechoslovakia.

STATUTE INVOLVED

The provisions of the Alien Enemy Act of 1798, R. S. 4067–4070, as amended, 40 Stat. 531, 50 U. S. C. 21–24, are set forth in the Appendix, *infra,* pp. 9–11.

STATEMENT

Petitioner filed a petition for a writ of habeas corpus in the District Court for the District of New Jersey, in which State he was then detained by respondent as an alien enemy (R. 2a–4a). The sole basis of this petition is petitioner's contention that he is not now a citizen or subject of an

enemy country within the meaning of the Alien Enemy Act of 1798, pursuant to which he is detained (Par. 6, R. 3a). The facts are not in dispute.

Petitioner was born in 1905 in Bohemia, then a part of the Austro-Hungarian Empire (R. 3a, 11a, 74a). Following World War I, and while petitioner still lived there, Bohemia became a part of the newly formed Republic of Czechoslovakia. Petitioner and his family continued to live in the place of his birth (R. 11a, 12a). This region was included in the so-called "Sudetenland," and petitioner and his parents belonged to the German-speaking element of the population, petitioner attending the German language schools (R. 33a–35a).

Petitioner graduated from the German technical school in Prague, Czechoslovakia, in 1932, and continued post-graduate studies there until 1934 (R. 12a, 13a). After working for sometime in a private laboratory in Freiburg, Germany, he came to the United States in the middle of 1935 (R. 14a). He then travelled as a Czechoslovakian citizen on a Czechoslovakian passport (R. 15a). He has remained in this country continuously since that time (R. 74a).

The Munich Agreement, providing for the transfer of the territory of petitioner's birth to Germany, was signed on September 29, 1938, and was confirmed by the Treaty of November 20, 1938, between Germany and Czechoslovakia (R. 14a,

60a). Approximately one month after the signing of the Munich Agreement and before the publication of the formal Treaty, petitioner went to the German Consul in Boston[1] and requested a German passport. He was advised that instructions for issuing such passports had not yet been received and that in the meantime he should keep his Czechoslovakian passport. He ultimately received his German passport early in October of 1939,[2] surrendering his Czechoslovakian passport in exchange (R. 16a.) At this time he registered for German military service (R. 41a, 42a, 62a). Not all residents of the annexed territory could become German citizens under the Munich Agreement and subsequent treaty, but only certain racial and cultural Germans (*Volkszugehöriger*), of whom petitioner was one, were so entitled upon request after determination that they fulfilled the requirements of German law (R. 49a, 63a, 64a, 59a–61a).

Petitioner at this time and subsequently at the time of the registration of alien enemies in 1942 considered himself a German citizen and registered as such (R. 43a, 44a, 48a, 54a). He de-

[1] Petitioner never visited the Czechoslovakian Consul prior to the annexation of that country (R. 17a, 18a), nor, despite the fact that this country recognized the Czechoslovakian Government-in-Exile, did he visit the Czechoslovak consulate thereafter (R. 72a, 75a).

[2] His purpose in procuring the passport was, *inter alia*, to effectuate his return to Germany to work for an I. G. Farben subsidiary (R. 35a, 36a, 50a, 51a).

clared his intention of becoming a United States citizen in August, 1940 (R. 37a), but stated in March, 1944, that he wished his naturalization postponed until the war had terminated (R. 40a). In 1944 he applied for repatriation to Germany as a German national (R. 45a). When he was apprehended in August, 1944 (R. 2a, 8a), he said that he would not accept American citizenship if it were granted, because to desert Hitler at that point would be nothing short of treason (R. 67a–68a).

No formal treaty since the Munich Agreement and Treaty of 1938 has dealt with the citizenship of residents of the Sudetenland (R. 61a, 62a).[3] The territory of petitioner's birth has, however, been returned to the control of Czechoslovakia pursuant to the Potsdam Agreement (R. 32a, 55a).

The district court issued the writ, and heard testimony. At the conclusion of the hearing, the court made findings of fact, finding *inter alia* that petitioner had voluntarily accepted German citizenship, and that in 1943–44 he had expressed his affection for Germany and his satisfaction that his native land had become a part of the

[3] Petitioner evidently concedes what is the fact, that residents of the Sudetenland who sought and obtained German citizenship as he did are in the highest degree *persona non grata* to Czechoslovakia, and plainly will not be claimed or acknowledged by its government as citizens or nationals of Czechoslovakia (Pet. 16).

Third Reich (R. 74a–76a); the writ was accordingly dismissed (R. 77a). On appeal, the court below affirmed, holding that petitioner became and remained a citizen of Germany (R. 79–82, 89).

ARGUMENT

Petitioner's position that he is no longer a German citizen is based entirely on the contention that the re-conquest and occupation by Czechoslovakia of the territory in which he was born has terminated the citizenship he acquired as a result of his application under the Munich Agreement and Treaty of 1938. This position involves a patent misapprehension concerning the authorities he cites. There is here involved no question as to the effect of the conquest and annexation of territory on the citizenship of the inhabitants of such territory. For petitioner was, at the time of re-conquest of the Sudetenland, an inhabitant of the United States and a citizen of Germany. His status as such was left unaffected by the annexation. *United States ex rel. Schwarzkopf* v. *Uhl,* 137 F. 2d 898 (C. C. A. 2); 1 Oppenheim, *International Law* (5th ed.), § 240.

Moreover, petitioner's German citizenship was not acquired as a result merely of the annexation of the territory by Germany in which he was born. He became a German through his own application as a racial and cultural German—a status having under German law no necessary connec-

tion with the territory of his birth or residence (R. 62a–64a). Indeed, it is clear from the testimony that petitioner's acquisition of German citizenship was a consensual act substantially equivalent to individual naturalization, and quite unlike the involuntary collective change of nationality which, by international law, is in certain circumstances a consequence of the annexation of territory by a new sovereignty.

There is here, also, no situation comparable to the one relied on by the Government in the *Schwartzkopf* case (*supra*) where it was unsuccessfully contended that all Austrians everywhere became German subjects upon annexation of their country by Germany because Austria had ceased to exist. Germany has not ceased to exist as an entity, and petitioner's German citizenship voluntarily elected by him persists in the absence of any showing of a subsequent naturalization on his part or of a treaty or other international agreement providing otherwise. Citizenship once acquired is presumed to continue. *Hauenstein* v. *Lynham*, 100 U. S. 483, 484. Nothing in the record here disturbs this presumption. The record is bare of indication on petitioner's part that he deviated in any way from his allegiance to Nazi Germany throughout the war or until he was actually faced with removal to Germany following its complete subjugation.

CONCLUSION

The decision of the court below is obviously correct. There is no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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APPENDIX

The Alien Enemy Act of 1798, as amended and as now contained in Title 50 of the United States Code, provides as follows:

> SEC. 21.[4] *Restraint, regulation, and removal.*
>
> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety (R.

[4] The section numbers are those of Title 50, U. S. C.

S. § 4067 as amended by the Act of April 16, 1918, ch. 55, 40 Stat. 531).

SEC. 22. *Time allowed to settle affairs and depart.*

When an alien who becomes liable as an enemy, in the manner prescribed in section 21 of this title, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native, citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality (R. S. § 4068).

SEC. 23. *Jurisdiction of United States courts and judges.*

After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United

States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed (R. S. § 4069).

Sec. 24. *Duties of marshals.*

When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be (R. S. § 4070).

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